



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chair
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member
David Anderson, Assoc. Member

DECISION – BOARD OF APPEALS CASE NO. 20-30

APPLICANT:

JKM Property One, LLC

SITE:

979 Main Street, Walpole, MA 02081

Assessor's Lot No. 33-30

The grant of a SPECIAL PERMIT under Section 9 (Non-Conforming Situations): 4 (Nonconforming Buildings): C. of the Zoning Bylaw to allow the enlargement or extension of the existing nonconforming building shown on the plan entitled: "Site Plan of Land "979 Main Street" Walpole, Massachusetts" dated April 28, 2020 last revised 8/31/20 prepared by GLM Engineering Consultants, Inc., together with any further relief the Board deems necessary.

On October 7, 2020 a Public Hearing was held, via Zoom Meeting, for the purpose of receiving information and voting upon a decision as to the granting of the Special Permit requested. The members who were present and voting:

NAMES OF VOTING MEMBERS

John Lee, Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Member

VOTE OF THE BOARD:

A motion was made by Fitzgerald and seconded by Coffey, that the Board grant JKM Property One, LLC a Special Permit under Section 9 (Non-Conforming Situations): 4 (Nonconforming Buildings): C. of the Zoning Bylaw to allow the enlargement or extension of the existing nonconforming building shown on the plan entitled: "Site Plan of Land "979 Main Street" Walpole, Massachusetts" dated April 28, 2020 last revised 8/31/20 prepared by GLM Engineering Consultants, Inc.

The vote was 4 - 0 - 0 in favor by roll call vote: Lee-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye, therefore, the Special Permit is hereby granted subject to the following conditions:

1. As stipulated by the Applicant, the residential component of the building shall be eight (8) one (1) bedroom units. Each unit shall be limited to one (1) vehicle, regardless of the number of occupants of the unit. This limitation shall be written into the lease for each unit.

2. As stipulated by the Applicant, except as may be permitted under the Americans with Disabilities Act or other similar law, no dogs shall be allowed in the building. This prohibition shall be written into the lease for each unit.

3. The Applicant shall submit copies of documentation recorded at the Registry of Deeds showing the reservation or grant of parking easements for eight (8) spaces. Documentation recording information as follows:

·Grant of Easement for spaces four (4) and five (5): recorded in Book 16664, page 473, Recorded on May 29, 2002.

·Deed reserving the parking easement for spaced six (6) through eleven (11): recorded in Book 16664, page 480. Recorded on May 29, 2002.

The Applicant shall at all times provide eight (8) off-street parking spaces, via the above-referenced easements or other legally binding arrangement, in support of the project

4. As stipulated by the Applicant, it shall file for Limited Site Plan Review and comply with all of the conditions thereof.

5. The building lighting shall be designed to provide illumination on the sidewalk along Glenwood Ave. and to the rear of the building.

6. The Applicant shall install on the property a bicycle rack to accommodate eight (8) bicycles.

REASONS FOR DECISION

The Board finds that the proposed redevelopment of the existing Bank of America building into a mixed use building with a proposed restaurant use on the first floor and basement floor with three floors of residential units above is an appropriate use for this building. As discussed below, the proposed building is in character with the neighborhood and will not be detrimental to the neighborhood. The Applicant has taken the needs of the Town as well as the character of the area into account and incorporated the same into his design. The Board finds that the Applicant meets all of the requirements for the granting of the requested Special Permit.

FURTHER FINDINGS

1. Section 2: Administration, 2. Special Permits, A. Finding and Determination required that:

Special Permits may be granted by the Board of Appeals and the Planning Board (the Special Permit Granting Authority or "SPGA"), as provided in this Bylaw, only for uses which are in harmony with the purposes and intent of this Bylaw and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.

The Board finds that Section 9.4.C. controls in this situation. Said Section 9.4.C the Zoning Bylaw, requires a finding that "such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming building." The Board finds that the proposed building is in character with the neighborhood. The Board further notes that the condominiums with

which the building shares a parking lot are fifty feet (50') high with no architectural features. The apartment building on the other side of Glenwood Avenue is 57.8' with considerably more mass and scale than the proposal currently before the board. The nonconformance requiring this special permit was caused by a public taking for the municipal parking lot. The taking changed the lot lines, but for all intents and purposes the locus is visually unchanged. Accordingly, the proposed change/alteration is not substantially more detrimental to the neighborhood than the existing building.

2. Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

Prior to granting a Special Permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

- (a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;***

The Board finds that the proposed expansion of the building for a mixed use project is in harmony with the purposes and intent of the By-Law and satisfies the conditions of approval as set forth below.

- (b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;***

As conditioned above, the Board finds that eight (8) residential units will not generate sufficient traffic so as to adversely affect the immediate neighborhood. The Board also notes that no off-street parking is required for the proposed restaurant use in this location.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;***

The Board finds that the condition of approval limiting residential component to eight (8) one (1)-bedroom units and the number of cars per unit to one (1), adequately addresses the number of residents and visitors to the apartments. In its Decision for Case No. 20-26, the impact of traffic was discussed in detail and this condition is satisfied in both cases.

- (d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;***

The Board notes that the lot was made non-conforming by a taking for the municipal parking lot. In accordance with Section 9.2.F a lot deficiency so created is treated as a grandfathered non-conforming lot and the changes or alterations requested by the Applicant are therefore subject to Section 9 and the subject of this Special Permit.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;***

The Board finds that the proposed changes were reviewed and commented on by both the Board of Health and the Fire Department. In summary, both comment letters note that the building will be brought up to code before occupancy, but have no issues with fire, explosion, emission of wastes, or other causes.

- (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed addition will not create any noise, dust, heat, smoke, fumes, odor, glare, or other nuisance.

- (g) shall not adversely affect the character of the immediate neighborhood; and***

The Board finds that eight (8) one (1) bedroom units with lease restrictions will be in character with the Central Business District (CBD). The preponderance of apartment units in the downtown area are studio, one, and two-bedroom units. Further, as shown on the plans, there is no change to the building footprint and the height of the building is less than the maximum allowed in the CBD. The Board also reavers its findings in Section 1 above.

- (h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.***

The Board finds that Section 4.2.B(2) of the Bylaw states that "the purpose of this district is to provide for a center of business activity accessible by pedestrian travel, to provide a center for municipal and cultural activities, and to act as a landmark and symbol of the Town." The proposed building provides for a mix of commercial and residential uses allowed by right in the CBD. This Special Permit is required is due to the size of the lot, not use. As stated above, the building alteration is in character with the neighborhood and in harmony with the purpose of the CBD. As such, the grant of this Special Permit as conditioned above is compatible with the CBD.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than three years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the

county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Building Inspector
Applicant

This decision was made on October 7, 2020 and filed with the Town Clerk on October 13 , 2020.